THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.Nos.9965, 9975, & 10007 of 1997

Dated:16-11-2006

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Between:

National Dharmal Power Corporation Limited, Ramagundam,Karimnagar.

Petitioner

And

Revenue Divisional Officer & I/C. L.A.O., NTPC-OA Unit,

Peddapalli, Karimnagar and others

Respondents

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THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.Nos.9965, 9975, & 10007 of 1997

COMMON ORDER:

1. All these three writ petitions raised common questions and they can be decided conveniently together.

2. The National Thermal Corporation Limited, (hereinafter be referred to as "the NTPC") the petitioner herein had established one of its units at Ramagundam in Karimnagar District of Andhra Pradesh. Large extents of land has been acquired for establishing this unit. Various notifications have been issued for compulsory acquisition of land invoking the provisions of the Land Acquisition Act, 1894 (for short "the Act"). A good number of the land oustees not being satisfied and content with the quantum of compensation awarded by the Collector have approached various sub courts invoking the power available under Section 18 of the Act. The sub courts have considered the matter and appropriately enhanced the compensation payable for the lands acquired. But however, some of those persons whose lands also have been acquired but who have not preferred the reference to the sub courts under Section 18 of the Act have come to realize that the sub courts concerned have enhanced the compensation manifold and thus they were denied and deprived of a similar benefit. Taking advantage of the salutary provision which has been incorporated in the Land Acquisition Act through Amendment Act 68 of 1984, by way of interaction of Section 28-A they have approached the Revenue Divisional Officer concerned requiring him to redetermine the amount of compensation payable to them on the basis of amount of compensation awarded by the civil court. In the previous round of litigation, the Revenue Divisional Officer has declined to entertain all such applications holding them as time barred inasmuch as such applications have been filed beyond the three months time limit specified under Section 28-A of the Act from the date the sub court has passed the respective judgments/decrees. That action of the Revenue Divisional Officer was the subject matter of challenge in W.P.No.16599 of 1992 before this court. The matter has been considered by this court at great length and ultimately by it's judgment rendered on 27-06-1995, the issue has been clinched in the following manner:

> *"Be that as it may, a reading of the counter-affidavit filed in the matter would suggest that the respondent himself was convinced that an order under Section 28-A of the Act is to be passed. The very fact that the N.T.P.C. authorities were asked to deposit funds for passing an order under Section 28-A of the Act, shows that the respondent was willing to consider the matter under Section 28-A of the Act provided funds were made available by the N.T.P.C., authorities. I am of the opinion that for passing an order under Section 28-A of the Act, availability or otherwise of the funds is not the criteria.*
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> *In the above circumstances, it is not possible to uphold the order passed by the Revenue Divisional Officer stating that the application under Section 28-A of the Act was not filed by the petitioners within the time. The Land Acquisition Officer, during the enquiry ought to have verified the records in the Subordinate Judge's Court at Peddapalli as the same would have revealed as to whether the application was filed by the petitioners within the time for obtaining certified copy of the award. If it is established that the application for certified copy of the Award was filed by the petitioners on or before 28-1-1988, in the circumstances, it has to be held that the petitioners have filed the application under Section 28-A of the Act on 28-1-1988 as asserted by them.*
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> *I, therefore, direct the Land Acquisition Officer to conduct a denovo*

enquiry into the mater, after giving a reasonable opportunity to the petitioners herein and decide as to whether at the petitioners filed application within the period of limitation under Section 28-A of the Act. It has to be seen and verified as submitted by the learned Government Pleader, that no person should get the benefit more than once. It is open to the Land Acquisition Officer to make an elaborate enquiry in this regard to find out as to whether any of the petitioners are claiming the benefit of Section 28-A of the Act more than once. For the foregoing reasons, I set aside the order passed by the Land Acquisition Officer dated 16-9-1992 and direct the Land Acquisition Officer to make a fresh enquiry in the light of the observations made in this judgment and shall dispose of the matter within three months from the date of receipt of a copy of this order. The writ petition is allowed to the extent indicated above. No costs."

3. In compliance with the above order, the Revenue Divisional Officer has passed orders on 18-11-1996 holding that the certified copies of the judgments of the reference court have been obtained on 19-1-1988 and the same were also filed before the Land Acquisition on 28-1-1988. Thus he found as a fact that the applications under Section 28-A of the Act are filed within the period of limitation. He has also returned a finding that the claimants have not availed any benefit under Section 18 of the Act earlier. Therefore, he directed the NTPC to deposit the differential amount between what has been awarded by the Land Acquisition Officer during the award enquiry and the enhanced compensation awarded by the sub court on reference under Section 18 of the Act. These orders have now been called in question by the NTPC.

4 . On behalf of the writ petitioner it has been strenuously contended that the Revenue Divisional Officer was required to conduct a detailed enquiry to find out as to whether the certified copies have been obtained by the claimants properly or not and as to whether such certified copies have been produced before the Revenue Divisional Officer concerned for determining the differential amount under Section 28- A of the Act. It is also contended that the Revenue Divisional Officer has not verified any records to ascertain as to whether the beneficiaries of the claims now are getting benefits allover again.

5. I am afraid that not one of these contentions contains any merit. It is not necessary for the Collector to ascertain the method and manner in which the certified copy of the judgment rendered by the sub court in all the references, was obtained, for purpose of rendering the benefits available under Section 28-A of the Act to the similarly placed land losers. All that is required to be established before the Collector is that an application is made within three months from the date the judgment of the court so that a redetermination of the compensation awarded by the Collector during the award enquiry can be undertaken. It will be useful to extract Section 28-A of the Act hereunder:

" Redetermination of the amount of compensation on the basis of the award of the court:- 1) Where in an award under this Part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to

the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving from them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

6. This wholesome provision has been incorporated by the amendment act 68 of 1984 with a view to extend an even handed treatment to all such persons whose lands have been acquired by and under the same notification issued under Section 4(1) of the Act irrespective of the fact whether they have made an application to the Collector under Section 18 seeking a reference to be made to the sub court at all or not. Secondly this provision is intended to avoid futile and unnecessary litigation and the consequential delay in settling a just and reasonable compensation payable to the persons whose lands stood acquired compulsorily. Therefore, all that a claimant needs to establish is to show that the land belonging to him stood acquired by the very same notification issued under Section 4(1) of the Act and that with reference to any one of such persons whose lands also stood similarly acquired by that very notification had got a fair assessment of compensation payable for him determined by the sub court upon reference under Section 18 of the Act. It is not therefore required of him to do anything more. He can simply ask the Collector to apply the same yardstick as was applied by the sub court/reference court and extend the benefit of appropriate computation of compensation payable. It is therefore clear that the production of certified copy of the judgment rendered by the reference court itself is not an essential requirement but however, to avoid any possible mistakes or duplicity of claims and as a matter of prudence, certified copies of the judgments rendered by the reference courts are required to be produced before the exercise of redetermination of the value of the land is undertaken under Section 28-A of the Act. Therefore, the courts have leaned in favour of such persons who have produced the certified copies, and construed them to have been filed in time provided that an application under Section 28-A of the Act has been made by such a person within three months from the time he obtained the certified copy of the judgment in the O.P. concerned rendered by the reference court . Courts have been taking judicial notice of the fact that the reference courts sometimes consume more than three months time for making available the certified copies of the judgments/decrees rendered by them. Therefore, not to disentitle any claimant only due to the delays that occurred on the administrative side of the courts, this liberal construction has been placed.

Hence it is not necessary to establish that the certified copy of the judgment has been secured by lawful means, by proving the date on which the copy application has been made, the fact whether the claimant himself has filed such an application etc. I therefore, hold that the first contention canvassed by the learned counsel for the writ petitioner does not contain any merit. The next contention canvassed on behalf of the writ petitioner was that the Revenue Divisional official had not conducted a detailed enquiry to determine as to whether the beneficiaries have already availed any benefits under Section 18 of the Act earlier, is concerned, it is a simple issue of verification of the records maintained at the Collectorate. Inasmuch as the notification through which the lands in question were acquired and the compensation awarded under the award enquiry proceedings and the subsequent references made to the civil courts are all available, all that one is required to do is to ascertain as to whether any one of the claimants had already solicited reference under Section 18 of the Act and got the benefit of escalated compensation for the lands acquired or not. Therefore, such an exercise does not call for anything more than looking into the records maintained in the normal course of business by the Collector concerned and that is what has been done in this case, as spelt out by the Revenue Divisional Officer in his order dated 18-11-1996. Therefore, this contention also lacks merit.

7. Finally what has been sought to be achieved by introducing Section 28-A of the Act cannot be allowed to be undone or frustrated at any rate at the hands of a public sector undertaking like the NTPC. The benefit of redetermination of the compensation amount payable at a uniform rate for all those covered by the same notification is a wholesome scheme enunciated for securing fair and equitable justice, which itself is the constitutional goal. I therefore, do not find any merit in these petitions and they are accordingly dismissed but however without costs.

NOOTY RAMAMOHANA RAO,J

16-11-2006

Stp